

under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the OCC or otherwise required by law, no national bank or Federal savings association may state in any advertisement or promotional material its capital category under this subpart or that the OCC or any other Federal banking agency has assigned the national bank or Federal savings association to a particular capital category.

(f) *Transition procedures*—(1) *Definitions applicable before January 1, 2015, for certain national banks and Federal savings associations.* Before January 1, 2015, notwithstanding any other requirement in this subpart and with respect to any national bank that is not an advanced approaches bank and any Federal savings association that is not an advanced approaches Federal savings association:

(i) The definitions of leverage ratio, tangible equity, tier 1 capital, tier 1 risk-based capital, and total risk-based capital as calculated or defined under appendix A to part 3 of this chapter, remain in effect for purposes of this subpart; and

(ii) The definition of total assets means quarterly average total assets as reported in a national bank's or Federal savings association's Consolidated Reports of Condition and Income (Call Report), minus intangible assets except mortgage servicing assets as provided in the definition of tangible equity. The OCC reserves the right to require a national bank or Federal savings association to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.

(2) *Timing.* On January 1, 2015 and thereafter, the calculation of the definitions of common equity tier 1 capital, the common equity tier 1 risk-based capital ratio, the leverage ratio, the supplementary leverage ratio, tangible equity, tier 1 capital, the tier 1 risk-based capital ratio, total assets, total leverage exposure, the total risk-based capital ratio, and total risk-weighted assets under this subpart is subject to the timing provisions at 12 CFR § 3.1(f) and the transitions at 12 CFR part 3, subpart G.

§ 6.2 Definitions.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

Advanced approaches national bank or advanced approaches Federal savings association means a national bank or Federal savings association that is subject to subpart E of part 3 of this chapter.

Common equity tier 1 capital means common equity tier 1 capital, as defined in accordance with the OCC's definition in subpart A of part 3 of this chapter.

Common equity tier 1 risk-based capital ratio means the ratio of common equity tier 1 capital to total risk-weighted assets, as calculated in accordance with subpart B of part 3 of this chapter, as applicable.

Control. (1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term controlled shall be construed consistently with the term control.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

Controlling person means any person having control of an insured depository institution and any company controlled by that person.

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Federal savings association means an insured Federal savings association or an insured Federal savings bank chartered under section 5 of the Home Owners' Loan Act of 1933.

Leverage ratio means the ratio of tier 1 capital to average total consolidated assets, as calculated in accordance with subpart B of part 3 of this chapter.³⁰

Management fee means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the national bank or Federal savings association or related overhead expenses, including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the national bank or Federal savings association.

National bank means all insured national banks and all insured Federal branches, except where otherwise provided in this subpart.

Supplementary leverage ratio means the ratio of tier 1 capital to total leverage exposure, as calculated in accordance with subpart B of part 3 of this chapter.

Tangible equity means the amount of tier 1 capital, as calculated in accordance with subpart B of part 3 of this chapter, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital.³¹

³⁰ Before January 1, 2015, the leverage ratio of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association is the ratio of tier 1 capital to average total consolidated assets, as calculated in accordance with appendix A to part 3 of this chapter.

³¹ Before January 1, 2015, the tangible equity of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association is the amount of tier 1 capital elements as defined in appendix A to part 3 of this chapter, plus the amount of outstanding cumulative perpetual preferred stock (including related surplus) minus all intangible assets except mortgage servicing assets to the extent permitted in tier 1 capital, as calculated in ac-

Tier 1 capital means the amount of tier 1 capital as defined in subpart B of part 3 of this chapter.³²

Tier 1 risk-based capital ratio means the ratio of tier 1 capital to risk-weighted assets, as calculated in accordance with subpart B of part 3 of this chapter.³³

Total assets means quarterly average total assets as reported in a national bank's or Federal savings association's Consolidated Reports of Condition and Income (Call Report), minus any deductions as provided in §3.22(a), (c), and (d) of this chapter. The OCC reserves the right to require a national bank or Federal savings association to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.³⁴

cordance with appendix A to part 3 of this chapter. The OCC reserves the right to require a national bank or Federal savings association to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.

³² Before January 1, 2015, the tier 1 capital of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this §6.2) is calculated in accordance with appendix A to part 3 of this chapter.

³³ Before January 1, 2015, the tier 1 risk-based capital ratio of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this §6.2) is calculated in accordance with appendix A to part 3 of this chapter.

³⁴ Before January 1, 2015, total assets means, for a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this §6.2), quarterly average total assets as reported in a bank's or savings association's Call Report, minus all intangible assets except mortgage servicing assets to the extent permitted in tier 1 capital, as calculated in accordance with appendix A to part 3 of this chapter. The OCC reserves the right to require a national bank

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Total leverage exposure means the total leverage exposure, as calculated in accordance with subpart B of part 3 of this chapter.

Total risk-based capital ratio means the ratio of total capital to total risk-weighted assets, as calculated in accordance with subpart B of part 3 of this chapter.³⁵

Total risk-weighted assets means standardized total risk-weighted assets, and for an advanced approaches national bank or advanced approaches Federal savings association also includes advanced approaches total risk-weighted assets, as defined in subpart B of part 3 of this chapter.

§6.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A national bank or Federal savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the national bank or Federal savings association is notified of, or is deemed to have notice of, its capital category pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A national bank or Federal savings association shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Consolidated Reports of Condition and Income (Call Report) is required to be filed with the OCC;

(2) A final report of examination is delivered to the national bank or Federal savings association; or

(3) Written notice is provided by the OCC to the national bank or Federal savings association of its capital category for purposes of section 38 of the FDI Act and this part or that the na-

or Federal savings association to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.

³⁵Before January 1, 2015, the total risk-based capital ratio of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this §6.2) is calculated in accordance with appendix A to part 3 of this chapter.

tional bank's or Federal savings association's capital category has changed pursuant to paragraph (c) of this section, or §6.4(e) and with respect to national banks, subpart M of part 19 of this chapter, and with respect to Federal savings associations §165.8 of this chapter.

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by national bank or Federal savings association.* A national bank or Federal savings association shall provide the OCC with written notice that an adjustment to the national bank's or Federal savings association's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the national bank or Federal savings association to be placed in a lower capital category from the category assigned to the national bank or Federal savings association for purposes of section 38 and this part on the basis of the national bank's or Federal savings association's most recent Call Report or report of examination.

(2) *Determination to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the OCC shall determine whether to change the capital category of the national bank or Federal savings association and shall notify the national bank or Federal savings association of the OCC's determination.

§6.4 Capital measures and capital category definition.

(a) *Capital measures*—(1) *Capital measures applicable before January 1, 2015.* On or before December 31, 2014, for purposes of section 38 and this part, the relevant capital measures for all national banks and Federal savings associations are:

(i) Total Risk-Based Capital Measure: the total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: the tier 1 risk-based capital ratio; and

(iii) Leverage Measure: the leverage ratio.

(2) *Capital measures applicable on and after January 1, 2015.* On January 1, 2015 and thereafter, for purposes of section